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U.S. DEPARTMENT OF JUSTICE
Office of the Secretary

VIACOM

January 27, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket #87-268

Dear Mr. Caton:

On January 24, 1997 Viacom Inc. submitted its reply comments in the Sixth Notice of Proposed Rule Making in the captioned matter. Attached is a duplicate of that filing with typographical errors corrected on pages 1, 6 and 7. None of these are changes in content or substance.

Courtesy copies of the attached are being distributed to each of the Commissioner's offices.

Very truly yours,



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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 27 1997

In the Matter of

Advanced Television Systems)
and Their Impact Upon the)
Existing Television) MM Docket No. 87-268
Broadcast Service)

**REPLY COMMENTS OF VIACOM INC.
ON THE SIXTH NOTICE OF PROPOSED RULE MAKING**

Viacom Inc. ("Viacom") hereby submits reply comments to the Commission's *Sixth Further Notice of Proposed Rule Making ("Sixth Notice")* in MM Docket No. 87-268, 11 FCC Rcd 10968 (1996). Viacom is a signatory to the reply comments filed this day by the Broadcasters Caucus. Moreover, Viacom agrees with the essential points set forth in the reply comments filed by Sinclair Broadcast Group, Inc. Nevertheless, as the indirect licensee of eleven full-service, commercial broadcast television stations,¹ ten of which are licensed on channels in the UHF band, Viacom submits these separate reply comments in support of and to highlight certain facets of the Plan agreed upon by the Broadcasters Caucus, Viacom, Sinclair and other broadcasters to resolve the possible competitive disadvantages which Viacom fears will be realized by NTSC stations now resident on the UHF band and which remain on that band when broadcasting digitally ("U-to-U" stations) when compared with VHF stations relocating to the UHF band ("V-to-U" stations) under the DTV Table of Allotments. However, Viacom dissents from that portion of the Broadcasters Caucus reply comments which endorses a July 25, 1996 cut-off date with respect to

¹ Those stations are: WPSG(TV), Channel 57, Philadelphia; WSBK(TV), Channel 38, Boston; WDCA, Channel 20, Washington, D.C.; KTXA(TV), Channel 21, Dallas; WKBD(TV), Channel 50, Detroit; WUPA(TV), Channel 69, Atlanta; KTXH(TV), Channel 20, Houston; WTOG-TV, Channel 44, St. Petersburg; KMOV(TV), Channel 4, St. Louis; and WVIT(TV), Channel 30, Hartford.

modification applications filed before or after that date and urges the Commission to include in the final Table all NTSC modification applications on file as of a future date (to be announced by the Commission) before adoption of a final Table.

I. The Power Level Flaw in the Tables

The separate DTV Table of Allotments set forth by the Commission in the *Sixth Further Notice* and by the Broadcasters Caucus in its proposal, are predicated on the principle of "replication." As described by the Commission, under the replication concept, the DTV Table attempts to provide DTV coverage areas comparable to existing NTSC Grade B coverage areas, taking each station's actual facilities and interference into account. *Sixth Further Notice*, FCC 96-317 at ¶12. Viacom supports this geography-based principle, but only insofar as it insures that digital UHF stations are no more disadvantaged *competitively* in comparison with VHF stations than they already are in the analog world. That is, Viacom urges the Commission to seek to achieve replication of the relative competitive posture of UHF stations with respect to VHF stations. Viacom recognizes that to do so requires adoption of a standard measure of competitive relativity, and the Commission can appoint a panel to do so. Viacom wishes to emphasize that it acknowledges the existing disparity between VHF and UHF stations and is not attempting in this proceeding to eliminate or reduce that difference. Rather, Viacom advocates only that the UHF/VHF marketplace disparity be no greater in digital than it is today.

The potential for aggravated disparity in the digital era is most likely to occur in the UHF band to which both VHF and UHF stations will be assigned. Replicating the larger coverage areas enjoyed by NTSC VHF stations which move to the UHF band by means of assigning to them DTV power levels substantially higher than will be assigned to UHF digital stations, creates this problem. An example of such disparity, even under the Table proposed by the Broadcasters Caucus, can be seen in Washington, D.C., where WDCA(TV), licensed to a Viacom subsidiary,

operates on Channel 20 and has a DTV assignment of Channel 69, and where WRC-TV operates on Channel 4 and has a DTV assignment of Channel 30. To replicate their current service areas, WDCA(TV)'s digital transmission under the Broadcasters Caucus Table is set at a power level of 167 kilowatts, while WRC-TV's power is set at a power level of 2,000 kilowatts, a twelve-fold disparity. The enhanced reception of WRC-TV with respect to that of WDCA(TV) will obviously hamper Viacom's economic competitiveness in the Washington, D.C. market.

Given the "cliff effect" of a DTV signal --in which viewers at a certain distance from the transmitter will receive not a degraded signal (as in the NTSC environment) but rather, no signal at all-- it is possible that Washington D.C.-area viewers with a typical indoor UHF loop antenna will be unable to receive the Viacom signal even within the station's present Grade A contour. At the same time, these viewers will be able to receive the competing signal of the much higher powered V-to-U stations. This incongruity will not only competitively disadvantage Viacom with respect to its video programming delivered to low gain, indoor, conventional TV antennas but also with respect to new computer appliances with pop-up low gain antennas used for the reception of video and data transmissions on computers. Similar disparities exist in the other nine markets in which Viacom operates UHF facilities. This disadvantage to Viacom's nine UPN-affiliated UHF stations, along with the hundreds of other similarly situated UPN affiliates nationwide, will further handicap the nascent emerging UPN network. UPN depends upon UHF outlets for its visibility. If the plans presently under consideration relegate UHF digital facilities to service areas inferior to that of VHF stations in terms of reception capability and, consequently, economic vitality, the viability of a fourth new network could be jeopardized.

II. The Plan to Resolve the Power Level Flaw

Recognizing the substantial inequities resulting from the Table's power level assignments to VHF and UHF stations relocating to the UHF band, the Broadcasters Caucus, Viacom, Sinclair

and other broadcasters collectively have spent many hours attempting to resolve the issue. The compromise resolution is embodied in the Plan. Under the Plan, the signatories commit to:

(1) devote time, personnel and substantial financial and logistical resources to design, conduct and evaluate field tests of V-to-U and U-to-U antenna receptivity and interference for the purpose of evaluating the extent to which the relative competitive posture of today's UHF and VHF stations is replicated in the DTV environment with respect to Grade A and Grade B coverages, taking into account indoor, direct connected antenna reception.

(2) work with receiver manufacturers to develop greatly improved receiving antenna technology for widespread inclusion in television receivers; and

(3) work to create and/or support the appropriate organizations to provide continuing technical oversight of the testing, power and channel allotment/assignment process and to make recommendations to the Commission based on neutral and scientific principles.

Moreover, the Plan provides for a two-year transition period during which UHF and VHF stations relocating to the UHF band will be subject to power levels other than those assigned to them in the Table proposed by the Broadcasters Caucus. For the first two-year period commencing with the Commission's adoption of the Table of Allotments, U-to-U stations in some markets would have the ability to double their power levels up to "X" kilowatts (a number which has yet to be agreed upon by signatories to the Plan²). Specifically, U-to-U stations would be permitted to operate at a level double their assigned power (as specified in the Broadcasters Caucus Table), not to exceed two-thirds of the power level of the lowest-powered V-to-U stations or "X" kilowatts, so long as no new material interference is caused to NTSC stations. For the same two-year period, despite higher assigned power levels, V-to-U stations would be permitted to operate only at "X," except for a certain number of such stations participating in the testing process, which would be allowed to operate up to their assigned levels.

The purpose of the two-year transition period is to establish a benchmark by which stations relocating to the UHF band may be optimally studied. During that period, a technical working

² For example, the power level for UHF stations should be 600 kilowatts, while ABC, CBS

group will collect field data and assess the data in order to make recommendations to the Commission. Under the terms of the Plan, the Commission will, relying on the field data collected by the technical working group, direct power increases for UHF stations and power decreases for VHF stations where necessary to achieve replication.

III. Three Significant Aspects of the Plan

Viacom supports the Plan, particularly the two-year transition it provides for broadcasters entering into the new, uncharted world of digital television. Because any table devised today is necessarily rooted in the theoretical, it is only reasonable for the Commission to direct the industry to take the measured, incremental approach to digital as outlined in the Plan. Thus, Viacom urges the Commission to adopt the Plan. In so doing, however, Viacom respectfully requests that the Commission require that:

- (1) VHF stations in the UHF band be permitted to operate at a power level of no more than 500 kilowatts during the two-year period (except for those stations participating in tests, which may operate at higher levels);
- (2) the field tests conducted during the two-year period be overseen and supervised by a neutral, unbiased body, but with the active participation of a group of representatives from various sectors of the broadcast industry; and
- (3) the Commission re-open its notice-and-comment processes at any stage of the entire transition period to digital in order to resolve legitimate issues and/or points of controversy raised by broadcasters.

A. VHF Stations Must Be Limited to No More Than 500 Kilowatts for the First Two Years

The signatories to the Plan were unable to reach consensus on the maximum power level for V-to-U stations. The signatories were split, with Viacom, ALTV, APTS/PBS, Sinclair and Tribune promoting a power limitation of 500 kilowatts, and with ABC, CBS, NBC and MSTV promoting a one megawatt limitation. Viacom urges the Commission to adopt the Plan and to impose a two-year limitation of 500 kilowatts for "V-to-U" stations. Thereafter, the determination as to

whether such stations could increase their power would be left to the Commission, based upon its analysis of the field data collected and analyzed within the context of assuring replication of the competitive posture of UHF stations as compared to VHF stations.

Barring non-experimental V-to-U stations from operating at levels above 500 kw during the two-year transition period will result in a more neutral determination of ultimate power levels at the end of that period. That is, establishing a 500 kilowatt limitation for V-to-U stations for the first two years insures that after that time the Commission will not need to engage in a decision-making process that is predicated on a *fait accompli* based on installation of expensive, embedded transmission facilities. Such a process would be heavily encumbered by economic arguments propounded by stations which have invested time, money and effort in installing expensive high power (i.e., in excess of 500 kw) facilities in order to preserve the benefit of heavy financial investments they have incurred. In short, the Commission now should limit V-to-U power levels to 500 kilowatts for the two-year transition period to avoid prejudging the outcome of its ultimate determination as to the powers to be assigned to V-to-U and U-to-U stations.

As to experimental stations, the Plan provides that at least one V-to-U station in each market (and more, if determined to be justifiable by the field testing body on engineering principles) will be permitted to operate at the power level assigned to it in the Table. The test stations, therefore, will operate for the first two years at a power in excess of 500 kilowatts.

Viacom cautions the Commission that the test stations may also assert the economic arguments discussed above so as to preserve their *status quo*. In order to avoid such assertions from jeopardizing what should be prejudice-free decision-making by the Commission, and to expedite the testing itself, Viacom proposes that the augmented costs of test stations be defrayed by an industry-subsidized fund. At the end of the two-year period, any test station permitted to continue operating at the increased power level for its own purposes would be required to

reimburse the fund for monies it accepted to defray the costs of the test. Those test stations required by the Commission to decrease power from their test levels would owe nothing to the fund. The Commission should encourage participation in and coordinate such a fund. Moreover, any station volunteering to serve as a test station during the transition, should be required to apply to the Commission for an experimental license. Such licenses should have expiration dates of no longer than two years and should expressly contain a condition stating that the experimental licensee operates its station subject to a possible decrease in power at the end of the license term. All test stations will, therefore, be on notice as to the limitations of their authority during the two-year transition and thereafter.

B. The Field Tests Must Be Overseen and Supervised By a Representative Body

The field studies conducted during the two-year period will largely determine the crucial power-level framework for television broadcasters in the digital era. It is important, therefore, that the studies be delegated to a body of technical persons highly experienced in the field of television broadcasting. Viacom believes that to achieve such an objective would mean that all broadcasters should defer to an independent council of engineers, to plan, review and participate in the design and data-collection process of the two-year testing scheme. This independent group would confer with and seek advice and assistance from industry associations whose members represent of all broadcasters, such as ALTV, MSTV and NAB, as well as Commission representatives.

C. The Commission Must Stand Ready, Willing and Able to Resolve Issues as They Arise

Key to the success of the two-year phase-in period is the flexibility and responsiveness of the Commission. Indeed, the Plan contemplates that the Commission will serve as arbiter of the power-level issue at the conclusion of the testing by requiring power increases for UHF stations and power decreases for VHF stations in the event that the competitive difference between UHF and VHF broadcasters are found to be exacerbated under the proposed Table of Allotments. Because they would result in a modification of the Table of Allotments codified as a Commission rule, such decisions will most likely be subject to the notice-and-comment procedure required under the Administrative Procedure Act. But the Commission should impose short comment deadlines and page limitations on comments filed and should issue an order within thirty days after the final comments deadline. Moreover, the Commission should entertain legitimate requests for declaratory rulings or petitions for rule making and initiate the requisite proceedings immediately. Viacom also urges the Commission to encourage Congress to give the Commission the authority to make such determinations in an adjudicatory, rather than a notice-and-comment proceeding.

IV. The Table Adopted by the Commission Should Include All Modification Applications Filed Up to the Date for Filing Reply Comments in this Proceeding

In the *Sixth Further Notice*, the Commission proposed that all NTSC modification applications on file as of July 25, 1996 (the date of adoption of the notice), as well as those filed subsequent to that date, be granted subject to the Commission's final decision on the DTV Table of Allotments. See FCC 96-317 at ¶63. The Commission's asserted rationale for this proposal is that service area replications to be provided by the draft Table set forth in the *Sixth Further Notice*, could be "substantially affected" if stations make changes after July 25, 1996 to their technical operations, including maximum effective radiated power (ERP), antenna height above average terrain (HAAT), and transmitter locations. However, the Commission also expressed its

concern that freezing modifications to existing NTSC stations "could pose hardships for broadcasters." *Id.* Accordingly, the Commission sought comment on whether conditions to grants of modification applications should adhere only to those applications filed after July 25, 1996.

Viacom urges the Commission to issue a "freeze" on modification applications as of a near-future date it will establish by Public Notice prior to the release of its final Table. Thus, the Commission could issue such a notice one or two weeks hence, establishing a date certain, for example, in February 1997, as the final date for accepting all modification applications that will be processed and included in the Table. Such a future date constitutes the fairest mechanism, in that it insures that all parties are on notice as to the Commission's freeze date. The importance to stations of securing the best NTSC technical facility prior to adoption of the Table cannot be adequately underscored. As the Commission itself recognizes, the very future of the nation's nearly 2,000 television stations is to be determined by its NTSC specifications on a given date. To set that crucial date such that all modification applications filed as of July 25, 1996, the time of adoption of the *Sixth Further Notice* --a date speculated upon by the industry, but which was never publicly announced in advance-- is arbitrary at best. That date is arbitrary in light of the fact that nearly 200 modification applications were filed with the Commission in the months of June and July 1996 alone. These 200 applications are in addition to all applications already on file and awaiting Commission action. In the five months after July 1996, through December 1996, the number of modification applications totaled less than half the number filed in June and July. Because Commission staff would have an onerous backlog of applications to process even if July 25, 1996 were set as the freeze date, no substantially greater burden would be created for the Commission staff if it were to process *all* modification applications set as of a publicly announced, near-future date. Not only would setting such near-future date constitute a fair, open and honest approach for all television broadcasters, but it would insure more certainty for broadcasters as they enter the digital era.

V. Conclusion

For the foregoing reasons, Viacom urges the Commission to adopt the Plan agreed to by a wide consensus of broadcasters, with emphasis on the matters discussed above.

VIACOM INC.

A handwritten signature in dark ink, appearing to read "Edward Schor", written in a cursive style.

Edward Schor
Vice President, Associate
General Counsel, Regulatory

January 24, 1997